Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services	)	
	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to its Broadband Services	)	WC Docket No. 06-125
	)	
Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services	)	

COMMENTS OF THE ADHOC TELECOMMUNICATIONS USERS COMMITTEE

The AdHoc Telecommunications Users Committee (the "AdHoc Committee") submits these Comments pursuant to the Commission's September 13, 2007 Public Notice[1] in the docket captioned above.

On September 11, 2007 Qwest withdrew the petition for forbearance that

---

[1] *Pleading Cycle Established For Comments On Qwest Petition For Forbearance Under 47 U.S.C. § 160(C) From Title II And Computer Inquiry Rules With Respect To Broadband Services*, WC Docket No. 06-125, Public Notice, DA 07-3923 (rel. Sept. 13, 2007).

had prompted the Commission to initiate this docket ("*June Petition*").[2] Qwest re-filed a virtually identical version of that petition on September 12, 2007 ("*September Petition*").[3] Because the *June Petition* makes no new arguments and introduces no new evidence to support Qwest's forbearance request, it suffers from the same fundamental defects in argument and evidentiary support that AdHoc identified in its pleading challenging the *September Petition*, previously filed in this docket[4] and attached hereto for reference as Attachment 1 ("*August Comments*"). Accordingly, AdHoc urges the Commission to deny the *September Petition* for all of the reasons detailed in the *August Comments*.

In those comments, AdHoc reminded the Commission that its members include some of the nation's largest and most sophisticated corporate buyers of telecommunications services. Committee members come from a broad range of economic sectors (banking; chemical, aerospace, and automotive manufacturing; financial services; transaction and credit card processing; insurance; retail; package delivery; and information technology) and maintain tens of thousands of corporate premises in every part of the country. Their combined spend on communications products is between two and three billion dollars per year. As substantial, geographically-diverse end users of telecommunications service

---

[2] Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services, WC Docket No. 06-125 (filed June 13, 2006) ("*June Petition*").

[3] Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services, WC Docket No. 06-125 (filed Sept. 12, 2007) ("*September Petition*"). The only differences between the September 12, 2007 petition and the June 13, 2006 petition are references at pp. 4-5 to the length of time that has passed since the Commission took action in certain other dockets.

[4] Comments of AdHoc Telecommunications Users Committee, WC Docket No. 06-125 (filed August 31, 2006)

nation-wide, AdHoc members are uniquely qualified to provide a credible, unbiased, and informed perspective on the state of competition in telecommunications markets.

Because AdHoc admits no carriers as members and accepts no carrier funding, its members have no commercial self-interest in imposing unwarranted regulatory limits on incumbent exchange carriers. Indeed, as high-volume purchasers of telecommunications services, AdHoc members have historically been among the first beneficiaries of the FCC's de-regulatory efforts for competitive carriers. As a consequence, AdHoc has consistently advocated de-regulation for telecommunications services as soon as a market becomes competitive.

But the markets for local exchange and interstate access services are not yet sufficiently competitive for market forces to discipline the ILECs' prices and practices, as Ad Hoc has repeatedly informed the Commission in earlier pleadings.[5] Consequently, customers remain vulnerable to the supracompetitive prices, impediments to innovative applications and equipment, sluggish provisioning, and other conditions associated with the kind of lop-sided market power that Qwest retains in its local exchange and access markets. Until competition emerges in Qwest's access markets, the regulatory forbearance it seeks in this docket is simply premature.

Despite these marketplace realities, or perhaps because of them, Qwest's petition does not address the state of competition for access service in its

---

[5] *See* Attachment 1, fn 4.

operating region or provide any evidence that it faces competition in its access markets. Indeed, Qwest's petition fails to even acknowledge the distinction between the interstate access services it provides (*i.e.,* the "final mile" services that connect end user locations to each other or to long distance voice and data networks including the Internet) and the interstate interexchange services (*i.e.,* long distance services) it provides using the same transmission technologies.

For example, Qwest includes as Attachment A to its petition a list of services it identifies by either the brand name it uses in the marketplace (*e.g.,* "GeoMax" or "Self Healing Network Service") or by the generic transmission technology it uses to provide a service (*e.g.*, "frame relay," "ATM," "OC3," "OC12," and "OC48"). But Qwest fails to indicate in either the attachment or in its petition whether it seeks forbearance only for its interstate interexchange versions of these services or for its access services as well. The interexchange services and the access services use the same transmission technologies. But interstate ***access*** services use facilities located within a Qwest exchange area to originate and terminate traffic bound for points outside that exchange (and in another state), while Qwest's interstate ***interexchange*** services use facilities connected to points in different exchanges (and in different states).

Qwest's failure to distinguish between these two services is significant for two reasons. First, the Commission long ago determined that it could forbear from regulating interstate interexchange services. Most recently, the Commission extended that forbearance to Qwest even if it eliminated the structurally separate long distance affiliates it was required to establish by

Section 272 of the Communications Act.[6] Thus Qwest's petition is moot to the extent that it seeks forbearance for the interstate interexchange versions of the services listed in its Attachment A.

Second, and more importantly, Qwest's failure to distinguish between access service and long distance service has resulted in its failure to introduce any evidence to support forbearance for its access services. In its *September Petition*, Qwest justification for the forbearance it seeks is that "competition for medium and large enterprise customers is strong, with a significant number of companies competing in the market."[7] As was true of the *June Petition,* however, Qwest's "evidence" in support of that claim is a single, nine-row table that purports to display the "U.S." market shares of Verizon, MCI, and Qwest based on 2002, 2003, and 2005 data for various services (such as "IP VPN Services") that do not even correspond to the services for which it seeks forbearance.

Qwest's dubious "evidence" of market share – based on data so stale it includes both Verizon and MCI as independent companies despite their merger – is for a single "U.S." market. Though it is not clear what service market Qwest is referring to, and while a single "U.S." market may be relevant for assessing competition in the nation-wide domestic long distance market, that market has no relevance to an assessment of Qwest's market power in the individual exchange areas where Qwest provides access services. Once again, Qwest has simply

---

6 *See Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets,* WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007).

7 *September Petition* at 16.

failed to introduce any evidence regarding competitive conditions in its in-region access markets.

Qwest's failure to provide evidence of access competition is consistent with its failure to produce such evidence even when it explicitly seeks forbearance for access services. In the four MSA-specific Petitions filed by Qwest earlier this year[8] – filings which Qwest should have supported with MSA-specific evidence of competition – Qwest failed to produce evidence demonstrating that such competition exists. As AdHoc detailed in its Comments in that docket,[9] the quantitative evidence submitted by Qwest established that the "competition" it confronts is confined principally to a small number of retail competitors who resell Qwest's services and thus remain dependent upon access to Qwest's bottleneck facilities.

Finally, the *September Petition* repeats the bizarre claim in the *June Petition* that regulation of "broadband services under Title II. . .has not been the product of a considered decision on the part of the Commission" but is instead the product of "regulatory creep," where by the Commission "reflexively" applied Title II regulation to broadband services because it was already regulating voice services.[10]

In fact, the regulatory *status quo* for the broadband services included

---

[8] *See Pleading Cycle Established for Comments on Qwest's Petitions for Forbearance in the Denver, Minneapolis-St.Paul, Phoenix, and Seattle Metropolitan Statistical Areas, Public Notice*, Docket No. 07-97, DA 07-2291 (rel. June 1, 2007).

[9] Comments of the AdHoc Telecommunications Users Committee, *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, filed August 31, 2007.

[10] *September Petition* at 13.

under special access is both deliberate, as a matter of historical fact, and necessary, given the lack of competition in the access marketplace and the petitioners' 20-year track record for exploiting their market power over these very services to establish excessive and discriminatory rates.

As a matter of historical fact, the Commission established the special access category in 1984 for broadband access services in the original interstate access charge regime "to eliminate the unreasonable discrimination inherent in the then prevailing system…[,]replace it with a single, uniform and nondiscriminatory rate structure" and "grant customers flexibility to assemble the kind and amount of service they wanted without being forced to pay for unneeded services or facilities."[11]

As the U.S. Court of Appeals for the D.C. Circuit observed, the Commission's orders adopting the access rules "distinguished two broad categories of services provided by the BOCs to interexchange carriers. 'Switched' access involves the shared use of local exchange facilities to originate and complete long-distance calls. 'Special' access involves the exclusive use of certain BOC facilities, generally private communications lines linking the end user's premises to a BOC wire center and linking the wire center to the premises of an interexchange carrier."[12] The court emphasized the broad range of service collected under the special access category. "Although special access circuits may be used to transmit ordinary voice communications, they are also used

---

[11] *Investigation of Special Access Tariffs of Local Exchange Carriers*, CC Docket No. 85-166, Phase I, FCC 86-52, rel. Jan. 24, 1986 at para. 5.

[12] *MCI v. FCC,* 842 F. 2d 1296, 1298 (D.C. Cir. 1988)

extensively to transmit telex, telegraph, video and other types of signals between end users and interexchange carriers…."[13]

Nearly 20 years ago, the Commission itself noted the "wide range of special access services," which even then included "dedicated channels ranging from telegraph grade to television, and may be single or duplex, analog or digital, and in some cases full- or part-time. In addition, the special access category includes the rates for numerous optional features and functions to meet the widely varying and often specialized needs of special access users."[14]

The Commission had recognized even earlier the significant role played by access services in supporting newly-emerging, specialized data transmission needs and computer technologies like those deployed in and supported by today's sophisticated data networks. "As telecommunications plays a larger and larger role in fundamental U.S. industries, the problems resulting from inappropriate pricing grow….Access pricing that does not reflect cost can turn computer technologies from directions that would enhance the productivity of this essential U.S. industry and all of the industries that depend on computers and communications toward simple avoidance of non-cost based telecommunications prices. Investment may be misdirected as a result."[15]

There is also nothing new about the BOCs' attempts to overcharge for special access services. Their first access tariffs in 1984 prompted the

---

[13] *Id.*

[14] *Investigation of Special Access Tariffs of Local Exchange Carriers*, Phase II, Part 1, Memorandum Opinion and Order, 4 FCC Rcd 4797 (1988) at para. 3.

[15] *MTS and WATS Market-Structure,* CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983) at para. 29 (footnotes omitted).

Commission to initiate a tariff investigation that resulted in a multi-million dollar refund to customers.[16] This pattern was repeated when the BOCs first began offering DS3 service and sought to avoid cost-supported, generally available rates by filing "individual case basis" ("ICB") rates. After investigation, the Commission rejected the BOCs' ICB rates as unlawful and ordered them to file lawful, generally available DS3 rates.[17]

As corporate data networks have continued to grow in size and economic importance, and with the rise of the Internet, broadband or special access services have become even more important to enterprise customers, BOC competitors, and interexchange carriers, generating about half of the BOCs' total access revenues. Yet, as Ad Hoc has repeatedly demonstrated,[18] the current market for broadband access is not competitive, producing excessive rates and desultory service. More importantly, the multi-year surge in demand for broadband access services and five years of supra-competitive profit levels for the BOCs have failed to attract significant competitive entry for the services used most by enterprise customers. Yet the Commission has repeatedly predicted that competition in this market was imminent and relied on those predictions to eliminate significant regulatory protections for broadband access customers. Given its abysmal track record for accurately predicting the emergence of competition in broadband access markets, the Commission cannot continue its

---

16 *See Investigation of Special Access Tariffs of Local Exchange Carriers*, CC Docket No. 85-166, Phase I, Memorandum Opinion and Order, 3 FCC Rcd 2638 (1988).

17 *See generally Local Exchange Carriers' Individual Case Basis DS3 Service Offerings*, CC Docket No. 88-136, 4 FCC Rcd 8634 (1989), *on recon.*, 5 FCC Rcd 4842 (1990).

18 *See* note 5, *supra.*

blithe reliance on similar rosy predictions and grant Qwest's petition.

CONCLUSION

For the reasons stated above, the petition should be denied.

Respectfully submitted,

ADHOC TELECOMMUNICATIONS
USERS COMMITTEE

By:

Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, D.C. 20036
202-857-2550

Counsel for the AdHoc Telecommunications
Users Committee

September 20, 2007

Certificate of Service

I, Dorothy Nederman, hereby certify that true and correct copies of the preceding Reply Comments of AdHoc Telecommunications Users Committee were filed this 20th day of September, 2007 via the FCC's ECFS system and by email to:

Janice M. Myles
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
Suite 5-C327
445 12th Street, SW
Washington, DC 20554
janice.myles@fcc.gov

Best Copy and Printing, Inc. (BCPI)
Suite CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com

Dorothy Nederman
Legal Assistant

ATTACHMENT 1